

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

Timothy Lukas, Esq. (4678)
Lars K. Evensen, Esq. (8061)
HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600
Fax: (702) 669-4650

Electronically filed: 10/13/2010

Attorneys for Bank Branch and Trust Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE: KILEY RANCH COMMUNITIES, a
Nevada Corporation,

Debtor,

Case No.: 10-53393-GWZ

Chapter: 11

**MOTION TO DETERMINE DEBTOR IS
A SINGLE ASSET REAL ESTATE
ENTITY TO WHICH 11 USC §362(d)(3)
APPLIES**

Hearing Date: November 17, 2010

Hearing Time: 10:00 a.m.

Estimated Time: 5-Minutes

Secured Creditor Bank Branch and Trust Company ("BB&T"), by and through its attorneys, Holland & Hart LLP, hereby moves this Court to Determine the Debtor is a Single Asset Real Estate Entity as defined under 11 USC §101 (51B) to which 11 USC §362 (d)(3) applies. BB&T's motion is based on the following Memorandum of Points and Authorities, the representation made by the Debtor at the meeting of creditors, the Declaration of Lars Evensen attached hereto, the papers and pleadings on file with this Court, and any argument of Counsel this Court may entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY.

The nature of the Debtor's business is as a real-estate developer. The Debtor did not designate the nature of its business as a Single Asset Real Estate ("SARE") as defined under 11 USC § 101(51B). Under the Bankruptcy Code definition of a SARE and the admission and representations of the Debtor, the Debtor should have designated the nature of its business as a SARE. Consequently, this Court should determine the Debtor is a SARE. Upon finding the Debtor is designated a SARE, 11 USC §362(d)(3) applies, as a matter of law. Under 11 USC §362(d)(3) the Debtor must either: (1) file a plan of reorganization that has a reasonable possibility of being confirmed, or (2) commence monthly payments, by either November 24, 2010 or 30-days after the Court determines the Debtor is subject to 11 USC §362(d)(3), whichever is later.

BB&T asks this Court to Designate the Debtor as an SARE and set a date certain when the Debtor is subject to the requirements of 11 USC §362(d)(3).

II. FACTS

On August 26, 2010, the Debtor filed a Chapter 11 petition for bankruptcy protection. *See* Doc. #1. In the petition, under the Nature of the Business section, the Debtor did not check the box designating it as a Single Asset Real Estate as defined in 11 USC § 101(51B).

On September 10, 2010, the Debtor filed its schedules with the Court. *See* Doc. #9. In Schedule A, the Debtor identifies a collection of some 30 properties totaling 674.6 acres, upon which the Debtor holds an option to purchase, and a Stone House consisting of 5.225 acres. For both the 674.6 acre parcels and the 5.225 acre parcel, the Debtor indicates the secured claim amount for these properties exceeds the current value (i.e. the Debtor has not equity in the properties). *See* Doc. #9.

On October 4, 2010, US Trustee conducted the §341 meeting of creditors. *See* Doc #18. At the Meeting of Creditors, the Debtor represented its business and source of revenue was generally the development of real property. *See* Declaration of Lars Evensen, ¶3 attached hereto

as **Exhibit 1** (the “Evensen Dec.”). The Debtor also represented the properties, the 674.6 acres and the 5.225 acres are located near each other and are all part of the same project. *See* Evensen Dec ¶4. It was then inquired of the Debtor why the SARE designation was not checked. *See* Evensen Dec. ¶5. In response, Debtor’s counsel, indicated the Debtor would have to investigate the issue further. *See* Evensen Dec. ¶6. As of this filing, the Debtor has not addressed the SARE designation issue. *See* Court’s docket generally.

III. ARGUMENT

Section 11 USC §101 (51B) defines the term Single Asset Real Estate. A SARE means “...real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.”

The nature of the Debtor’s business is the development of the real property and activities incidental thereto. According to the Debtor, the properties and interests in Schedule A are intended to generate substantially all of the gross income of a Debtor. Consistent with its business model, there is no dispute, the Debtor’s scheduled real property, including interests therein, constitutes as a single project. Consequently, the Debtor should be designated a SARE, pursuant to 11 USC §101(51B).

Upon designating the Debtor as an SARE, as a matter of law, 11 USC §362(d)(3) applies to the Debtor. Under 11 USC §362(d)(3) the Debtor must either: (1) file a plan of reorganization that has a reasonable possibility of being confirmed or (2) commence monthly payments, by either November 24, 2010 (90-day after the Order for Relief) or 30-days after the Court determines the Debtor is subject to 11 USC §362(d)(3), whichever is later.

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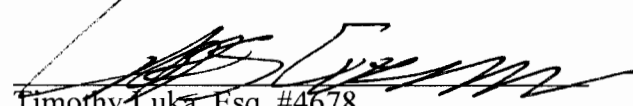
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1 **IV. CONCLUSION**

2 BB&T asks this Court to Designate the Debtor as an SARE and set a date certain when
3 the Debtor is subject to the requirements of 11 USC §362(d)(3).

4 Dated on this 13th day of October, 2010.

6 HOLLAND & HART LLP

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Timothy Luka, Esq. #4678

9 Lars K. Evensen, Esq. 8061

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10 3800 Howard Hughes Parkway, 10th Floor

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CERTIFICATE OF SERVICE

I am, and was when the herein described mailing took place, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the within action; that on October 13, 2010, I served a true and correct copy of **MOTION TO DETERMINE DEBTOR IS A SINGLE ASSET REAL ESTATE ENTITY TO WHICH 11 USC §362(d)(3) APPLIES** through the Court's electronic CM/ECF system or by US mail (where indicated) as follows:

- STEPHEN R HARRIS noticesbh&p@renolaw.biz
- U.S. TRUSTEE - RN - 11 USTPRegion17.RE.ECF@usdoj.gov
- BRIAN K WALTERS bwalters@mpplaw.com,
dbennion@mpplaw.com;mwright@mpplaw.com;kcoleman@mpplaw.com

Manual Notice List

KILEY RANCH COMMUNITIES	10625 DOUBLE R BLVD.	SUITE 100	RENO, NV 89521
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HAWLEY TROXELL ENNIS & HAWL	877 MAIN STREET, SUITE 1000	BOISE, ID 83701	
INTERNAL REVENUE SERVICE	Centralized Insolvency Operations	P. O. Box 21126	Philadelphia, PA 19114-0326
JENSEN PRECAST	625 BERGIN WAY	SPARKS, NV 89431	
KILEY COMMUNITY PROPERTY TR	10625 DOUBLE R BLVD #100	RENO, NV 89521	
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NORTHERN NEVADA CONCRETE	235 MOONSHINE CIRCLE	RENO, NV 89523	

NV DEPARTMENT OF MOTOR VEHICLES	ATTN: LEGAL DIVISION	855 WRIGHT WAY	CARSON CITY, NV 89711
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PLACES CONSULTING SERVICES	3218 DIAMOND RIDGE DRIVE	RENO, NV 89523	
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TITAN ELECTRICAL CONTRACTING	P.O. BOX 18202	RENO, NV 89511	
UNITED RENTALS	800 BENNIE LANE	RENO, NV 89512	
VALLEYCREST LANDSCAPE DEVEL	24151 VENTURA BLVD.	CALABASAS, CA 91302	
WASHOE COUNTY TREASURER	P.O. BOX 30039	RENO, NV 89520- 3039	
WESTERN NEVADA SUPPLY	P.O. BOX 1576	SPARKS, NV 89432	


An Employee of Holland & Hart LLP

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